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Counsel for Plaintiff

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

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BRANDON COLE,

Plaintiff,

v.

PEARSON EDUCATION INC.,

Defendant.

Civil Action No.:

COMPLAINT AND
DEMAND FOR A JURY TRIAL

Plaintiff BRANDON COLE, by and through undersigned counsel, pursuant to the applicable Federal Rules of Civil Procedure and the Local Rules of this Court, demands a trial by jury of all claims and issues so triable, and for his Complaint against Defendant Pearson Education Inc. ("Defendant" or "Pearson"), hereby asserts and alleges as follows:

JURISDICTION AND VENUE

- 1. Plaintiff Brandon Cole is a resident of the State of Washington who resides at 4917 N. Boeing Road, Spokane Valley, WA 99206.
- 2. Defendant Pearson Education Inc. is a Delaware corporation with its principle place of business at One Lake Street, Upper Saddle River, New Jersey.

- 3. This is an action for copyright infringement and related claims brought by Plaintiff, the holder of copyrights to photographs described herein, against Defendant for unauthorized uses of those copyrighted photographs.
- 4. Jurisdiction for Plaintiff's claims lies with the United States District Court for the Southern District of New York pursuant to the Copyright Act of 1976, 17 U.S.C. §§ 101, et seq., 28 U.S.C. § 1331 (conferring original jurisdiction "of all civil actions arising under the Constitution, laws, or treaties of the United States"), and 28 U.S.C. § 1338(a) (conferring original jurisdiction over claims arising under any act of Congress relating to copyrights).
- 5. Venue is proper in this Court under 28 U.S.C. §§ 1391(b) since a substantial portion of the alleged misconduct by Defendant giving rise to the claims asserted herein occurred in this District and 28 U.S.C. § 1400(a) since Defendant resides or may be found in this District. Further, Defendant conducts substantial business in the State of New York, is subject to personal jurisdiction in the State of New York, has infringed Plaintiff's copyrights in the State of New York as described herein, and previously has consented to this Court's jurisdiction over it for claims alleging similar conduct.

GENERAL ALLEGATIONS

- 6. Plaintiff Brandon Cole is a professional photographer who makes his living by taking and licensing photographs.
- 7. Defendant Pearson Education Inc. is a publishing company in the business of creating and publishing educational textbooks, instructional technology materials, reference works, and other similar materials and publications.
- 8. Upon information and belief, Pearson has exploited several of Plaintiff's copyrighted photographs in various publications without permission and/or prior to obtaining

permission. The full scope of Pearson's infringing activities in this regard has not yet been ascertained.

9. Upon information and belief, Pearson also has exploited several of Plaintiff's copyrighted photographs in various publications in excess of the so-called "print run"—a term that identifies and sets the maximum number of copies of a publication that may be printed under the applicable license agreement—authorized under license agreements pertaining to Plaintiff's creative works. The full scope of Pearson's infringing activities in this regard has not yet been ascertained.

ALLEGATIONS REGARDING SPECIFIC PHOTOGRAPHS IN SPECIFIC PUBLICATIONS

Late Permissioning

- 10. Upon information and belief, Defendant published three (3) of Plaintiff's photographs identified as "km2084," "lf4619," and "lo7179" in its publication titled and/or referred to as *Miller Levine Biology 2010*.
- 11. Upon information and belief, Defendant published Plaintiff's photographs in this publication without obtaining prior permission from Plaintiff.
- 12. Photo km2084 was registered with the United States Copyright Office as part of copyright registration VA 1-205-144. A true and correct copy of the certificate of registration is attached hereto as Exhibit 1.
- 13. Photo If4619 was registered with the United States Copyright Office as part of copyright registration VAu 491-190. A true and correct copy of the certificate of registration is attached hereto as Exhibit 2.
- 14. Photo Io7179 was registered with the United States Copyright Office as part of copyright registration VAu 507-555. A true and correct copy of the certificate of registration is

attached hereto as Exhibit 3.

- 15. Upon information and belief, Defendant published Plaintiff's photograph identified as "ge970, CO-21\Humpback Whale" in the 6th edition of its Copyright 2009 publication titled and/or referred to as *BIOLOGY: Concepts & Connections*.
- 16. Upon information and belief, Defendant published Plaintiff's photograph in this publication without obtaining prior permission from Plaintiff.
- 17. Photo ge970 was registered with the United States Copyright Office as part of copyright registration VA 1-002-048. A true and correct copy of the certificate of registration is attached hereto as Exhibit 4.
- 18. Upon information and belief, Defendant published Plaintiff's photograph identified as "ge970, CO-21\ Humpback Whale" in the 6th edition of the Instructor's Resources and Media edition of its Copyright 2009 publication titled and/or referred to as BIOLOGY: Concepts & Connections.
- 19. Upon information and belief, Defendant published Plaintiff's photograph in this publication without obtaining prior permission from Plaintiff.
- 20. Upon information and belief, Defendant published two (2) of Plaintiff's photographs identified as "ge970, 41-06\A baleen whale," and "mb42, 44-03\Sockeye salmon" in the 8th edition of the Instructor's Resources and Media of its Copyright 2008 publication titled and/or referred to as *BIOLOGY*.
- 21. Upon information and belief, Defendant published Plaintiff's photographs in this publication without obtaining prior permission from Plaintiff.
- 22. Photo mb42 was registered with the United States Copyright Office as part of copyright registration VAu 465-978. A true and correct copy of the certificate of registration is

attached hereto as Exhibit 5.

- 23. Upon information and belief, Defendant published three (3) of Plaintiff's photographs identified as "ge970, 41-06\A baleen whale," "pd70528-D, Hector's dolphins," and "mb42, 44-03\Sockeye salmon" in the 8th edition of the student edition of its Copyright 2008 publication titled and/or referred to as *BIOLOGY*.
- 24. Upon information and belief, Defendant published Plaintiff's photographs in this publication without obtaining prior permission from Plaintiff.
- 25. Photo pd70528-D was registered with the United States Copyright Office as part of copyright registration VAu 677-507. A true and correct copy of the certificate of registration is attached hereto as Exhibit 6.
- 26. Upon information and belief, Defendant published Plaintiff's photograph identified as "JZ-1799, Intertidal zonation" in the 8th edition of its Copyright 2005 publication titled and/or referred to as *Essentials of Oceanography*.
- 27. Upon information and belief, Defendant published Plaintiff's photograph in this publication without obtaining prior permission from Plaintiff.
- 28. Photo JZ-1799 was registered with the United States Copyright Office as part of copyright registration VAu 498-124. A true and correct copy of the certificate of registration is attached hereto as Exhibit 7.
- 29. Upon information and belief, Defendant published Plaintiff's photograph identified as "JZ-1799, Intertidal zonation" in the 9th edition of its Copyright 2008 publication titled and/or referred to as *Essentials of Oceanography*.
- 30. Upon information and belief, Defendant published Plaintiff's photograph in this publication without obtaining prior permission from Plaintiff.

- 31. Upon information and belief, Defendant published Plaintiff's photograph identified as "GE-970, a baleen whale" in the 7th edition of its Copyright 2005 publication titled and/or referred to as *BIOLOGY*.
- 32. Upon information and belief, Defendant published Plaintiff's photograph in this publication without obtaining prior permission from Plaintiff.
- 33. Upon information and belief, Defendant used, published, copied, and otherwise exploited Plaintiff's above-identified photographs without obtaining a valid license or authorization prior to obtaining a license, permission, or authorization to use, publish, copy, display, or otherwise exploit Plaintiff's copyrighted works.
- 34. Upon information and belief, Defendant was well aware of its obligations to obtain a license to use Plaintiff's works at the time it used, published, copied, and otherwise exploited Plaintiff's photographs as described above.
- 35. Upon information and belief, in certain instances, *after* Defendant already had used, copied, published, and otherwise exploited Plaintiff's photographs as described above, Defendant attempted to obtain a license to use Plaintiff's above-identified photographs in these publications.
- 36. Upon information and belief, at the time that Defendant represented to Plaintiff or his agents or representatives that it intended to use the photographs identified herein in the textbooks, publications, and other educational materials identified above, Defendant knew that it already had published those books and materials and that it had already begun to use and exploit Plaintiff's images without a license or prior authorization.
- 37. Upon information and belief, in those instances where a Defendant obtained a license to use Plaintiff's images in any of the publications identified above, Defendant styled the

permission requests as requests for prospective rights despite the fact that the publications already had been printed and Plaintiff's images already had been used and exploited without permission.

- 38. Upon information and belief, at the time that Defendant requested permission to use Plaintiff's photographs in any of the publications identified above, Defendant failed to advise, inform, or disclose to Plaintiff or his agents or representatives that the images already had been used in publications that already had been published.
- 39. Upon information and belief, any purported license granted by Plaintiff to Defendant after a publication already had been published was obtained by Defendant under intentionally false and misleading circumstances.
- 40. Upon information and belief, any purported license granted by Plaintiff to Defendant expressly stated: "Rights to reproduction of photographs granted only upon receipt of payment of invoice in full. Any use prior to such payment may be considered an infringement of copyright."
- 41. Upon information and belief, any purported license granted by Plaintiff to Defendant after a publication already had been published did not grant any retroactive rights to Defendant pertaining to Defendant's prior, unauthorized use of Plaintiff's images.
- 42. Upon information and belief, any purported license granted by Plaintiff to Defendant after a publication already had been published did not cure or otherwise compromise any copyright infringement claim Plaintiff may have against Defendant.
- 43. Upon information and belief, Defendant's attempt to ratify or conceal its unauthorized use of Plaintiff's creative works by surreptitiously seeking to obtain retroactive rights demonstrates that it was and is aware that it infringed Plaintiff's copyrights and that it did

so willfully, maliciously, and/or recklessly.

Print Overruns

- 44. Upon information and belief, Defendant licensed Plaintiff's "ge970, CO-21\ AAIMYVS0\Humpback Whale" photograph for use in the 6th edition of its Copyright 2009 publication titled and/or referred to as *BIOLOGY: Concepts & Connections* (ISBN No. 0321489845).
- 45. A true and correct copy of the license pertaining to this publication is attached hereto as Exhibit 8 ("Invoice Memo # 2150").
- 46. By its express terms, this license grants Defendant permission to use this photograph in only 100,000 copies of this publication.
- 47. The license terms also unequivocally provide that "Additional use of any kind whatsoever, in any media or by any means of distribution, requires an additional licensing fee."
- 48. The "Usage and Rights" provision of this license agreement expressly provides that "Any use prior to such payment may be considered an infringement of copyright. Any use not specifically granted in this license constitutes copyright infringement."
- 49. Upon information and belief, Defendant subsequently requested the limited right to print an additional 100,000 copies of this publication, for a total print run allowance of 200,000 copies.
- 50. A true and correct copy of the license granting this limited print run extension is attached hereto as Exhibit 9 ("Invoice Memo # 2184").
- 51. By its express terms, this license grants Defendant permission to use this photograph in only an additional 100,000 copies of this publication, for a total print run of 200,000 copies.

- 52. The license terms for this limited print run extension unequivocally provide that "Additional use of any kind whatsoever, in any media or by any means of distribution, requires an additional licensing fee."
- 53. The "Usage and Rights" provision of this license agreement expressly provides that "Any use prior to such payment may be considered an infringement of copyright. Any use not specifically granted in this license constitutes copyright infringement."
- 54. Accordingly, Defendant's permission to publish this photograph was limited to a total print run of 200,000.
- 55. Upon information and belief, notwithstanding these express limitations on Defendant's permission to use Plaintiff's photographs, Defendant exceeded and acted outside the scope of these license restrictions by printing more than 200,000 copies of this publication.
- 56. Upon information and belief, Defendant licensed Plaintiff's "ge970, CO-21\ AAIMYVS0\Humpback Whale" photograph for use in the 6th edition of the Instructor's Resources & Media materials of the Copyright 2009 publication titled and/or referred to as BIOLOGY: Concepts & Connections (ISBN No. 0321548248).
- 57. A true and correct copy of the license pertaining to this publication is attached hereto as Exhibit 10 ("Invoice Memo # 2151").
- 58. By its express terms, this license grants Defendant permission to use this photograph in only 20,000 copies of this publication.
- 59. The license terms also unequivocally provide that "Additional use of any kind whatsoever, in any media or by any means of distribution, requires an additional licensing fee."
- 60. The "Usage and Rights" provision of this license agreement expressly provides that "Any use prior to such payment may be considered an infringement of copyright. Any use

not specifically granted in this license constitutes copyright infringement."

- 61. Upon information and belief, notwithstanding these express limitations on Defendant's permission to use Plaintiff's photographs, Defendant exceeded and acted outside the scope of these license restrictions by printing more than 20,000 copies of this publication.
- 62. Upon information and belief, Defendant licensed Plaintiff's "ge970, 41-06\AACGJQY0\A baleen whale," and "mb42, 44-03\AAIJRFK0\Sockeye salmon" photographs for use in the 8th edition of its Copyright 2008 publication titled and/or referred to as *BIOLOGY* (ISBN No. 0805368442).
- 63. A true and correct copy of the license pertaining to this publication is attached hereto as Exhibit 11 ("Invoice Memo # 2166").
- 64. By its express terms, this license grants Defendant permission to use this photograph in only 300,000 copies of this publication.
- 65. The license terms also unequivocally provide that "Additional use of any kind whatsoever, in any media or by any means of distribution, requires an additional licensing fee."
- 66. The "Usage and Rights" provision of this license agreement expressly provides that "Any use prior to such payment may be considered an infringement of copyright. Any use not specifically granted in this license constitutes copyright infringement."
- 67. Accordingly, Defendant's permission to publish this photograph was limited to a print run of 300,000.
- 68. Upon information and belief, notwithstanding these express limitations on Defendant's permission to use Plaintiff's photographs, Defendant exceeded and acted outside the scope of these license restrictions by printing more than 300,000 copies of this publication.
 - 69. Upon information and belief, Defendant licensed Plaintiff's "JZ-1799, Intertidal

zonation" photograph for use in the 9th edition of its Copyright 2008 publication titled and/or referred to as *Essentials of Oceanography* (ISBN No. 0132401223).

- 70. A true and correct copy of the license pertaining to this publication is attached hereto as Exhibit 12 ("Invoice Memo # 1934").
- 71. By its express terms, this license grants Defendant permission to use this photograph in only 40,000 copies of this publication.
- 72. The license terms also unequivocally provide that "Additional use of any kind whatsoever, in any media or by any means of distribution, requires an additional licensing fee."
- 73. The "Usage and Rights" provision of this license agreement expressly provides that "Any use prior to such payment may be considered an infringement of copyright. Any use not specifically granted in this license constitutes copyright infringement."
- 74. Accordingly, Defendant's permission to publish this photograph was limited to a print run of 40,000.
- 75. Upon information and belief, notwithstanding these express limitations on Defendant's permission to use Plaintiff's photographs, Defendant exceeded and acted outside the scope of these license restrictions by printing more than 40,000 copies of this publication.
- 76. Upon information and belief, Defendant licensed Plaintiff's "GE-970, a baleen whale" photograph for use in the 7th edition of its Copyright 2005 publication titled and/or referred to as *BIOLOGY* (ISBN No. 0805371710).
- 77. A true and correct copy of the license pertaining to this publication is attached hereto as Exhibit 13 ("Invoice Memo # 1673").
- 78. By its express terms, this license grants Defendant permission to use this photograph in only 200,000 copies of this publication.

- 79. The license terms also unequivocally provide that "Additional use of any kind whatsoever, in any media or by any means of distribution, requires an additional licensing fee."
- 80. The "Usage and Rights" provision of this license agreement expressly provides that "Any use prior to such payment may be considered an infringement of copyright. Any use not specifically granted in this license constitutes copyright infringement."
- 81. Accordingly, Defendant's permission to publish this photograph was limited to a print run of 200,000.
- 82. Upon information and belief, notwithstanding these express limitations on Defendant's permission to use Plaintiff's photographs, Defendant exceeded and acted outside the scope of these license restrictions by printing more than 200,000 copies of this publication.
- 83. Upon information and belief, Defendant licensed Plaintiff's "GE-970, a baleen whale" photograph for use in the Instructor Resource materials and CD-Rom of the 7th edition of its Copyright 2005 publication titled and/or referred to as *BIOLOGY* (ISBN No. 805371737).
- 84. A true and correct copy of the license pertaining to this publication is attached hereto as Exhibit 14 ("Invoice Memo # 1674").
- 85. By its express terms, this license grants Defendant permission to use this photograph in only 10,000 copies of this publication.
- 86. The license terms also unequivocally provide that "Additional use of any kind whatsoever, in any media or by any means of distribution, requires an additional licensing fee."
- 87. The "Usage and Rights" provision of this license agreement expressly provides that "Any use prior to such payment may be considered an infringement of copyright. Any use not specifically granted in this license constitutes copyright infringement."
 - 88. Accordingly, Defendant's permission to publish this photograph was limited to a

print run of 10,000.

- 89. Upon information and belief, notwithstanding these express limitations on Defendant's permission to use Plaintiff's photographs, Defendant exceeded these license restrictions and printed more than 10,000 copies of this publication.
- 90. Upon information and belief, Defendant licensed Plaintiff's "HU-690, Aggregating Anemones" photograph for use in Teacher Express CD-Rom of its Copyright 2005 publication titled and/or referred to as *Miller and Levine's Biology*.
- 91. A true and correct copy of the license pertaining to this publication is attached hereto as Exhibit 15 ("Invoice Memo # 1648").
- 92. By its express terms, this license grants Defendant permission to use this photograph in only 5,000 copies of this publication.
- 93. The license terms also unequivocally provide that "Additional use of any kind whatsoever, in any media or by any means of distribution, requires an additional licensing fee."
- 94. The "Usage and Rights" provision of this license agreement expressly provides that "Any use prior to such payment may be considered an infringement of copyright. Any use not specifically granted in this license constitutes copyright infringement."
- 95. Accordingly, Defendant's permission to publish this photograph was limited to a print run of 5,000.
- 96. Upon information and belief, notwithstanding these express limitations on Defendant's permission to use Plaintiff's photographs, Defendant exceeded and acted outside the scope of these license restrictions by printing more than 5,000 copies of this publication.
- 97. Defendant, by its willful and knowing actions, injured Plaintiff by engaging in the unlicensed, unauthorized, and uncompensated use of Plaintiff's creative works and, as such,

deprived Plaintiff of his rightful compensation for the use of his creative works.

- 98. Upon information and belief, Defendant has and continues to financially benefit from the uncompensated use of Plaintiff's creative works.
- 99. Upon information and belief, none of the above-identified license agreements between Plaintiff and Defendant permitted Defendant to print more than the stated print run for a given publication.
- 100. Upon information and belief, Defendant acted outside the scope of its limited license and exceeded the scope of its limited permission to use Plaintiff's copyrighted photographs by printing more copies of a given publication than was permitted under the applicable license agreement.

COUNT I (COPYRIGHT INFRINGEMENT--LATE PERMISSIONING)

- 101. Plaintiff repeats and re-alleges each allegation set forth in paragraphs 1-100 as if set forth fully herein.
- 102. Plaintiff is the registered copyright owner of the creative works identified herein and that are the subject of this action.
- 103. Upon information and belief, Defendant used, published, distributed, and/or exploited Plaintiff's creative works without prior license or permission or authorization to do so.
- 104. Upon information and belief, Defendant did not secure permission, authorization, or a license to use and display Plaintiff's creative works in the publications and materials identified in Paragraphs 10-31 prior to publication.
- 105. In those cases where Defendant subsequently sought permission to use Plaintiff's photographs in the publications identified in Paragraph 10-31, it did so without disclosing that it already had used Plaintiff's creative works in textbooks and materials that already had been

published.

- 106. By using and publishing Plaintiff's copyrighted creative works in its textbooks and materials without prior permission or license to do so, Defendant infringed Plaintiff's copyrights in those creative works.
- 107. Defendant's subsequent attempts to retroactively obtain permission to use Plaintiff's photographs demonstrates that it was aware of its obligation to obtain authorization from the creator of a creative work in order to use and publish that photograph in its publications.
- 108. Defendant's use of Plaintiff's photographs without permission infringes Plaintiff's copyrights in the photographs identified herein.
- 109. By infringing Plaintiff's copyrights in creating and distributing commercial publications, Defendant misappropriated Plaintiff's intellectual property for its own profit, causing Plaintiff significant injuries, damages, and losses in amounts to be determined at trial.
- 110. Defendant's unauthorized use of Plaintiff's copyrighted images prior to obtaining any permission was willful.
- 111. Defendant's efforts to conceal or ratify its unauthorized use of Plaintiff's creative works demonstrates that it was fully aware that its use was unauthorized and thus infringing and that its conduct was intentional, willful, reckless, and/or malicious.
- 112. Plaintiff seeks all damages recoverable under the Copyright Act, including statutory or actual damages, including Defendant's profits attributable to the infringing use of Plaintiff's creative works, and damages suffered as a result of the lack of compensation, credit, and attribution. Plaintiff also seeks all attorneys' fees and any other costs incurred in pursuing and litigating this matter.

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COUNT II (COPYRIGHT INFRINGEMENT--PRINT OVERRUNS)

- 113. Plaintiff repeats and re-alleges each allegation set forth in paragraphs 1-112 as if set forth fully herein.
- 114. Plaintiff is the registered copyright owner of the creative works identified herein and that are the subject of this action.
- 115. Upon information and belief, Defendant used, published, distributed, and/or exploited Plaintiff's creative works in excess of and outside the limited scope of its license or permission or authorization to do so.
- 116. By printing more copies of the publications identified in Paragraphs 44-90 Defendant exceeded any limited authority it may have had to use Plaintiff's photographs in these publications.
- 117. Defendant's use of Plaintiff's photographs in excess of the terms set forth in the license agreements referred to in Paragraphs 44-90 and attached hereto as Exhibits 8-15 infringes Plaintiff's copyrights in the photographs identified in those agreements.
- 118. By infringing Plaintiff's copyrights in creating and distributing commercial publications, Defendant misappropriated Plaintiff's intellectual property for its own profit, causing Plaintiff significant injuries, damages, and losses in amounts to be determined at trial.
- 119. Defendant's unauthorized use of Plaintiff's copyrighted images, including its use in excess of whatever limited authority or permission it may have obtained, was willful.
- 120. Defendant's efforts to conceal or ratify its unauthorized use of Plaintiff's creative works demonstrates that it was fully aware that its use was unauthorized and thus infringing and that this conduct was intentional, willful, reckless, and/or malicious.
 - 121. Plaintiff seeks all damages recoverable under the Copyright Act, including

statutory or actual damages, including Defendant's profits attributable to the infringing use of Plaintiff's creative works, and the damages suffered as a result of the lack of compensation, credit, and attribution. Plaintiff also seeks all attorneys' fees and any other costs incurred in pursuing and litigating this matter.

WHEREFORE, Plaintiff respectfully prays for judgment on his behalf and for the following relief:

- 1. A preliminary and permanent injunction against Defendant from copying, displaying, distributing, advertising, promoting, and/or selling the infringing publications identified herein, and requiring Defendant to deliver to the Court for destruction or other appropriate disposition all relevant materials, including digital files of Plaintiff's photographs and all copies of the infringing materials described in this complaint that are in the control or possession or custody of Defendant;
- 2. All allowable damages under the Copyright Act, including, but not limited to, statutory or actual damages, including damages incurred as a result of Plaintiff's loss of licensing revenue and Defendant's profits attributable to infringement, and damages suffered as a result of the lack of credit and attribution;
- 3. Plaintiff's full costs, including litigation expenses, expert witness fees, interest, and any other amounts authorized under law, and attorneys' fees incurred in pursuing and litigating this matter;
- 4. Any other relief authorized by law, including punitive and/or exemplary damages; and
 - 5. For such other and further relief as the Court deems just and proper.

JURY TRIAL DEMANDED

Dated October 1, 2010 New York, New York.

Respectfully submitted,

NELSON & McCULLOCH LLP

By: Deniel A Nelson (DNI4040)

Danial A. Nelson (DN4940) Kevin P. McCulloch (KM0530) The Chrysler Building 405 Lexington Ave., 26th Floor New York, New York 10174

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dnelson@nelsonmcculloch.com kmcculloch@nelsonmcculloch.com

Attorneys for Plaintiff

CERTIFICATE OF REGISTRATION



This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

For a Work of the Visual Arts UNITED STATES COPYRIGHT OFFICE

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Case 1:10-cv-07523-JFK Document 1 Filed 10/01/10 Page 30 of 55

CERTIFICATE OF REGISTRATION



This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

VAu 465-978

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OFFICIATISTEATF THIS WORK ▼

United States of America

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TE CONTINUATION SHEET.

BRANDON D. COLE Marine Life Photo Collection

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Publication as a Contribution If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the Title of Collective Work ▼ contribution appeared.

If published in a periodical or serial give: Volume \

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Year in Which Creation of This Work Was Completed

This information Must be given ≪Year in all cases.

Complete this information ONLY if this work has been published. Month 🕨

Date and Nation of First Publication of This Particular Work

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Instructions

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BRANDON D. COLE 1109 E-12th Ave Spokane, WA

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Lertificate of Registration



'This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

VAU 677 – 507

Marybeth Peters

Register of Copyrights, United States of America

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For a Work of the Visual Arts



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Brandon Cole marine photography

4917 N. Boeing Rd., Spokane Valley, WA 99206 USA web: www.brandoncole.com e-mail: brandoncole@msn.com

tel: 509.535.3489

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Invoice Memo # 2150

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Michelina Viscusi, Image Permission Coordinator

PEARSON EDUCATION, IRC

DATE: P.O #

9,3.08

One Lake Street

Ordered by:

M. Viscusi

Upper Saddle River, NJ 07458

tel: 201-236-5807

michelina_viscusi@pearson.com

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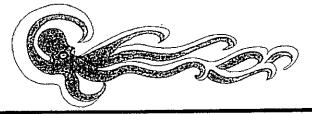
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Brandon Cole marine photography

4917 N. Boeing Rd., Spokane Valley, WA 99206 USA web: www.brandoncole.com e-mail: brandoncole@msn.com tel: 509.535.3489

Invoice Memo # 2184

TO:

Michelina Viscusi, Image Permission Coordinator

PEARSON EDUCATION, IRC

One Lake Street

Upper Saddle River, NJ 07458

tel: 201-236-5807

DATE:

P.O #

12.15.08

Ordered by: M. Viscusi

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QUANTITY EXTENSION

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6) This submission is conditioned on the return of all delivered items safely, undamaged, and in the condition delivered. Client assumes all risk for all photographic material supplied by Photographer from time of receipt by to time of actual receipt by Client of Photographs by Photographer. Client assumes insurer's liability, not bailee's, for such return prepaid and fully

Insured by bonded messenger, air freight, or registered mail. Federal Express is the recommended delivery agent in all cases. Client assumes insurer's liability to indemnify Photographer for all loss, damages, or misuse of any photographs. Client assumes full liability for its employees, agents, assigns, messengers, and freelance researchers for any loss, damage, or misuse of these images. 7) Photographer's copyright notice-'Copyright O Brandon Cole' or 'www.brandoncole.com' must accompany each use as an adjacent credit line. Invoice amount shall be tripled if said credit line is not provided. Client acknowledges that such a triple fee is fair and reasonable for photographer's loss of recognition and lack of copyright protection resulting from lack of, or improper, copyright notice/credit line,

8) Client may not assign or transfer this agreement, or any rights granted hereunder, to any third party. This agreement binds and inures to the benefit of Photographer, Client, Client's principals, employees, agents, and affiliates and their respective heirs, legal representatives, successors, and assigns. Client and its principals, employees, agents, and affiliates are jointly and severally liable for the performance of all payment and other obligations hereunder. No amendment or waiver of any terms is binding unless set forth in writing and signed by the parties. This agreement

incorporates by reference Articles 2 and 3 of the Uniform Commercial Code and the Copyright Act of 1976, as amended. Client may not reprint Photographs, or sell or license Photographs to any third party. 9) Any dispute in connection with this stock picture invoice including its validity, interpretation, performance, or breach shall be arbitrated in Spokane, Washington pursuant to the rules of the American Arbitration Association and the laws of Washington. Judgement on the Arbitration award may be entered on the highest Federal or State Court having jurisdiction. Any dispute involving \$1500.00 or less may be submitted, without arbitration, to any Court having jurisdiction thereof. Offend shall pay all arbitration and Court costs, reasonable Attorney's fees, plus legal interest on any award or judgement. 10) Client agrees that the above terms are made pursuent to Articles 2 and 3 of the Uniform Commercial Code and agrees to be bound by the same, including specifically the above clause 9 to exhibite disputes.

11) Client will indemnify and defend Photographer against all claims, liability, damages, costs, and expenses, including reasonable legal fees and expenses, arising out of any use of any photographs for which no release was furnished by Photographer, or any photographs which are altered by Client. Unless so furnished, no release exists,

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Brandon Cole marine photography

4917 N. Boeing Rd., Spokane Valley, WA 99206 USA web: www.brandoncole.com e-mail: brandoncole@msn.com tel: 509.535.3489

Invoice Memo # 2151

TO:

PEARSON EDUCATION, IRC

One Lake Street

Upper Saddle River, NJ 07458 tel: 201-236-5807

Michelina Viscusi, Image Permission Coordinator

DATE: P.O # 9.3.08

Ordered by:

M. Viscusi

Description of photographs and usage

Photo code: Description:

humpback, BIOLOGY: Concepts & Connections-Instructor's Resources & Media Fee:

Use/Size:

170 \$

ge970, CO-21(3)/AAIMYVS0\Humpback Whale

BIOLOGY: Concepts & Connections-Instructor's Resources & Media, Authors: Campbell-Reece-Taylor-Simon-Dickey, 6th Edition, © 2009

1/4 page size, inside placement, on Chapter Opener page

ISBN: 0321548248 Imprint: Benjamin Cummings

michelina_viscusi@pearson.com

Note- this fee reflects a 15% discount for this being a secondary use

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Rights to reproduction of photographs are granted only upon Usage and Rights: Cole's receipt of payment of invoice in full. Any use prior to such payment may be considered an infringement

of copyright. Any use not specifically granted in this license constitutes copyright infringement.

Please make check payable to: Brandon Cole

Federal Tax ID#: 83-0383262

SUBTOTAL: \$ Research Fee: \$

170

Other (

170 TOTAL DUE: \$

Thank you-

Terms and Conditions:

Both parties agree that the following terms and conditions embody all of the understandings and obligations between the parties hereto.

1) "Photographer" refers to Brandon D. Cole. "Photographs" means all photographic material furnished by Photographer, whether transparencies, digital files, scans, or otherwise, "Client" refers to the commissloning party, recipient of Photographs, or company named above and including, but not limited to, its representatives, employees, agents, affiliates, assigns, helis, successors, and freelance researchers. 2) Except as otherwise specifically provided herein, all Photographs and rights therein, including copyright, remain the sole and exclusive property of Photographer. Any additional uses require the prior written aggrement of Pholographer on terms to be negotiated. Unless otherwise expressly provided herein, any grant of rights is fimited to one (1) year from the date hereof for the territory of the United States and such rights are one-time, non-exclusive, English language only, USA editorial print (on paper) reproduction rights only.

3) Time is of the essence for receipt of payment and return of photographs. No rights are granted until Cole's receipt of payment of this invoice in full. Payment is required within thirty (30) days of invoice, Five (5) % per month service charge on unpaid balance is applied thereafter. Adjustment of the amount of terms must be requested within ten (10) days of invoice receipt.

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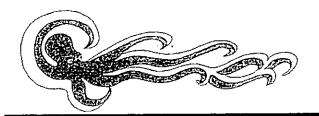
insured by bonded messenger, air freight, or registered mail. Federal Express is the recommended delivery agent in all cases. Offent assumes insurer's liability to indemnify Photographer for all loss, damages, or misuse of any photographs. Client assumes full fability for its employees, agents, assigns, messangers, and freelance researchers for any loss, damage, or misuse of these images. 7) Photographer's copyright notice-'Copyright © Brandon Cole' or 'www.brandoncole.com' must accompany each use as an adjacent credit line, Invoice amount shall be implied if said credit line is not provided, Client acknowledges that such a triple fee is fair and reasonable for photographer's loss of recognition and lack of copyright protection resulting from tack of, or improper, copyright notice/credit line.

B) Client may not assign or transfer this agreement, or any rights granted hereunder, to any third party. This agreement binds and inures to the benefit of Photographer, Client, Client's principals, employees, agents, and affiliates and their respective heirs, legal representatives, successors, and assigns. Client and its principals, employees, agents, and affiliates are jointly and severally liable for the performance of all payment and other obligations hereunder. No amendment or waiver of any terms is binding unless set forth in writing and signed by the porties. This agreement incorporates by reference Articles 2 and 3 of the Uniform Commercial Code and the Copyright Act of 1976, as amended, Client may not reprint Photographs, or soil or license Photographs to any third party.

9) Any dispute in connection with this stock picture invoice including its validity, interpretation, performance, or breach shall be arbitrated in Spokane, Washington pursuant to the rules of the American Arbitration Association and the laws of Washington. Judgement on the Arbitration award may be entered on the highest Federal or State Court having jurisdiction. Any dispute involving \$1500,00 or less may be submitted, without arbitration, to any Court having jurisolation thereof. Client shall pay all arbitration and Court costs, reasonable Attorney's fees, plus legal interest on any award or judgement. 10) Client agrees that the above torms are made pursuant to Articles 2 and 3 of the Uniform Commercial Code and agrees to be bound by the same, including specifically the above clause 9 to artificate disputes. 11) Client will inderwrify and defend Photographer against all claims, liability, demages, costs, and expenses, including reasonable legal fees and expenses, arising our of any use of any

pholographs for which no release was furnished by Photographer, or any photographs which are eltered by Glient. Unless so furnished, no release exists. 12) Objection to the above terms must be made in writing within ten (10) days of this memo's receipt. Holding Photographs for more than 48 hours, or use of Photographs in any way, including publication, or payment of this invoke, constitutes acceptance of the above terms which incorporates hereby Articles 2 and 3 of the Uniform Commercial Code and the Copyright Act of 1976 as amended.

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Brandon Cole marine photography

4917 N. Boeing Rd., Spokane Valley, WA 99206 USA web: www.brandoncole.com e-mail: brandoncole@msn.com tel: 509,535,3489

Invoice Memo # 2166

TO:

Photo code:

Michelina Viscusi, Image Permission Coordinator

11,3.08

PEARSON EDUCATION, IRC

DATE: P.O #

One Lake Street

Ordered by:

Use/Size:

M. Viscusi

Upper Saddle River, NJ 07458

tel: 201-236-5807

michelina viscusi@pearson.com

Description of photographs and usage

Description:

humpback whale, BIOLOGY text, Campbell-Reece. Imprint: Benjamin Cummings

Fee:

ge970, 41-06(1)\AACGJQY0\A baleen whale

BIOLOGY textbook, ISBN: 0805368442; Authors: Campbell-Reece

300

Note-this fee reflects a 15% discount for this being a secondary use

8th Edition, © 2008; 1/4 page size, inside placement,

BIOLOGY textbook, ISBN: 0805368442; Authors: Campbell-Reece

350

mb42, 44-03\AAIJRFK0\Sockeye salmon

8th Edition, @ 2008; 1/4 page size, inside placement,

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of copyright. Any use not specifically granted in this license constitutes copyright infringement.

Please make check payable to: Brandon Coie

Federal Tax ID#: 83-0383262

SUBTOTAL: \$

Research Fee: \$

Other (

650 TOTAL DUE: \$

650

Thank you-

Terms and Conditions:

Both parties agree that the following terms and conditions embody all of the understandings and obligations between the parties hereto.

1) "Photographer" refers to Brandon D. Cole. "Photographs" means all photographic material furnished by Photographer, whether transparencies, digital files, scans, or otherwise. "Client" refers to the commissioning party, recipient of Photographs, or company named above and including, but not limited to, its representatives, employees, agents, affiliates, assigns, heirs, successors, and freelance researchers. 2) Except as otherwise specifically provided herein, all Photographs and rights therein, including copyright, remain the sole and exclusive property of Photographer. Any additional uses require the prior written aggreement of Photographer on terms to be negotiated. Unless otherwise expressly provided herein, any grant of rights is limited to one (1) year from the date hereof for the territory of the United States and such rights are one-time, non-exclusive, English language only, USA editorial print (on paper) reproduction rights only.

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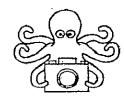
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\$40 U.S., surcharge to cover bank currency conversion charges. For wire transfers, add \$25 U.S. to cover bank service charges.

Version 3,15,06



Brandon Cole

Marine Photographer

web: www.brandoncole.com e-mail: brandoncole@msn.com tel: 509.535.3489

4917 N. Boeing Rd., Spokane, WA 99206 USA

Invoice Memo # 1934

TO:

Debbie Latronica, Image Permission Coordinator

PEARSON EDUCATION, IRC

P.0#

DATE:

4.5.07

One Lake Street

Ordered by:

D. Latronica

Upper Saddle River, NJ 07458

tel: 201-236-5849

debbie_latronica@pearsoned.com

Description of photographs and usage

tidepool shot in Essentials of Oceanography, Trujillo & Thurman, Edition 9

Description:

Use/Size:

Photo code: JZ-1799

Intertidal zonation

Essentials of Oceanography textbook by Trujillo & Thurman 1/4 pg, inside placement, IMPRINT: Pearson Prentice Hall 195

Note that the \$195 fee reflects a 15% discount for re-use of this photo, first published in

8th edition of same title

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Credit line must read: 'Copyright @ Brandon Cole' OR 'www.brandoncole.com' Usage and Rights Granted: Rights to reproduction of photographs granted only upon

Research Fee: \$ Other (

receipt of payment of invoice in full. Any use prior to such payment may be considered an infringement TOTAL DUE: \$

of copyright.

Please make check payable to: Brandon Cole

Thank you-

195

Terms and Conditions:

Federal Tax ID#: 83-0383262

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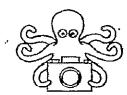
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Brandon Cole

Marine Photographer

web: www.brandoncole.com e-mail: brandoncole@msn.com tel: 509.535.3489

4917 N. Boeing Rd., Spokane, WA 99206 USA

Invoice Memo # 1673

TO:

Michelina Viscusi, Image Permission Coordinator

DATE:

1.29.05

PEARSON EDUCATION, IRC

P.O #

One Lake Street

Ordered by:

M. Viscusi

Upper Saddle River, NJ 07458

tel: 201-236-5807

michelina viscusi@pearsoned.com

Description of photographs and usage Photo code:

Description:

humpback (baleen) whale, BIOLOGY textbook, BC Campbell-Reece

Use/Size:

GE-970

A baleen whale

BIOLOGY textbook, by BC Campbell and Reece

380

1/4 pg, inside placement Note-this fee reflects a 15% discount for this being a secondary use

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SUBTOTAL: \$

Research Fee: \$

Credit line must read: 'Copyright @ Brandon Cole' OR 'www.brandoncole.com' Usage and Rights Granted: Rights to reproduction of photographs granted only upon

Other (

TOTAL DUE: \$

380

380

receipt of payment of invoice in full. Any use prior to such payment may be considered an infringement

of copyright.

Please make check payable to: Brandon Cole Federal Tax ID#: 83-0383262

Thank you-

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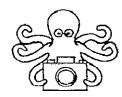
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Brandon Cole

Marine Photographer

web: www.brandoncole.com e-mail: brandoncole@msn.com

tel: 509.535.3489

4917 N. Boeing Rd., Spokane, WA 99206 USA

Invoice Memo # 1674

TO:

Michelina Viscusi, Image Permission Coordinator

PEARSON EDUCATION, IRC

One Lake Street

Upper Saddle River, NJ 07458 tel: 201-236-5807

DATE: P.O # 1.29.05

Ordered by:

M. Viscusi

michelina viscusi@pearsoned.com

Description of photographs and usage

humpback (baleen) whale, BIOLOGY-IR CD, BC Campbell-Reece

Description:

Use/Size:

Fee:

\$

170

GE-970

Photo code:

A baleen whale

BIOLOGY IR CDRom, by BC Campbell and Reece

1/4 pg, inside placement

Note- this fee reflects a discount for this being a secondary use

TERMS OF LICENSE- Upon receipt of payment in full of \$ 170, Cole grants PEARSON EDUCATION, IRC onetime, non-exclusive editorial reproduction rights to publish photo ge-970 once in one version/edition only of BIOLOGY IR CDRom, authors Campbell & Reece, Edition 7, Copyright 2005, published by Pearson/Benjamin Cummings Imprint, ISBN 0805371737. Photo to be reproduced inside CDRom at 1/4 page size. Print run: 10k copies. Distribution: World. Languages: English only. Photo credit "Photo © www.brandoncole.com" to be included. Print use rights are NOT automatically conferred by this electronic use licensing. No usage is herein granted for print uses, advertising, promotion, internet, web, PDF, e-book, archiving, or other print or electronic use. Additional use of any kind whatsoever, in any media or by any means of distribution, requires an additional licensing fee-Please call us.

> SUBTOTAL: \$ Research Fee: \$

170

Credit line must read: 'Copyright @ Brandon Cole' OR 'www.brandoncole.com' Usage and Rights Granted: Rights to reproduction of photographs granted only upon receipt of payment of invoice in full. Any use prior to such payment may be considered an infringement

Other (

170 TOTAL DUE: \$

of copyright.

Please make check payable to: Brandon Cole

Federal Tax ID#: 83-0383262

Thank you-

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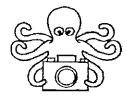
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Version 1,2.04

Case 1:10-cv-07523-JFK Document 1 Filed 10/01/10 Page 55 of 55



Brandon Cole

Marine Photographer

web: www.brandoncole.com

e-mail: brandoncole@msn.com

tel: 509.535.3489

4917 N. Boeing Rd., Spokane, WA 99206 USA

Invoice Memo # 1648

TO:

Vickie Menanteaux, Image Permission Coordinator

PEARSON EDUCATION, IRC

DATE: P.O#

9.24.04

FLANSON LDGG

Ordered by:

V. Manantaguy

One Lake Street

Upper Saddle River, NJ 07458

tel: 201-236-5804

V. Menanteaux

Description of photographs and usage

Miller and Levine's Biology TEACHER EXPRESS CD-Rom by Prentice Hall

Photo code:

Description:

Use/Size:

Fee:

HU-690

Aggregating Anemones

"Biology" Teacher Express CDRom © 2005 / inside, 1/4 pg \$

150

5k units, English Language

fee reflects discount for secondary use of this photo

TERMS OF LICENSE- Upon receipt of payment in full of \$ 150, Cole grants Pearson Education / Prentice Hall School one-time, non-exclusive editorial reproduction rights to publish photo HU-690 once in one version/edition only of one educational CDRom titled "Biology" Teacher Express, © 2005, Authors: Miller and Levine, Imprint: Prentice Hall School. Photo to be reproduced in same context as original use in printed textbook (at 1/4 page size, inside). Print run: 5000 copies of the CDRom in English. Distribution: United States, and up to 5% in Canada. Photo credit "Photo © www.brandoncole.com" to be included. No usage is herein granted for advertising, promotion, internet, web, PDF, e-book, archiving, or other printed, electronic or digital use. Additional use of any kind whatsoever, in any media or by any means of distribution, requires an additional licensing fee- Please call us.

SUBTOTAL: \$
Research Fee: \$

150

Credit line must read: 'Copyright © Brandon Cole' OR 'www.brandoncole.com'
Usage and Rights Granted: Rights to reproduction of photographs granted only upon

receipt of payment of invoice in full. Any use prior to such payment may be considered an infringement

Other (): \$

TOTAL DUE: \$ 150

of copyright,

Please make check payable to: Brandon Cole Federal Tax ID#: 83-0383262

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